

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

| | | |
|----------------------------|---|---------------------------------------|
| State of Oklahoma, |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. 4:05-cv-00329-GKF-PJC |
| |) | |
| Tyson Foods, Inc., et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

**DEFENDANTS' REPLY IN SUPPORT OF JOINT MOTION TO STRIKE
PORTIONS OF PLAINTIFFS' DAMAGES EXPERTS' REPORT**

Defendants offer the following reply in support of their Motion to Strike (Dkt. No. 1950) and in response to Plaintiffs' opposition to that motion (Dkt. No. 1987). For the reasons discussed below, Defendants urge the Court to strike from Plaintiffs' January 2009 damages experts' disclosures any and all results, opinions, and conclusions based on representations or assumptions about proposals for alum treatments of any portion of the IRW.

DISCUSSION

Plaintiffs' response fails to take on the main point of Defendants' motion: That Plaintiffs have failed to provide the required Rule 26 expert disclosures for the "alum treatment" underlying the contingent valuation ("CV") survey portion of the Stratus report. Instead, Plaintiffs treat the motion as if it were a Daubert attack on the scientific methods and opinions employed by Plaintiffs' damages experts. There is no question that the fundamental premise of Plaintiffs' argument—essentially, that "interviewers are free to lie to the survey participants as long as they lie convincingly"¹—is vulnerable under Daubert, and Defendants expect to bring such a challenge before the Court at the appropriate time. The present motion, however, is *not* a Daubert challenge to these experts' methods and opinions, but an objection to Plaintiffs' failure to timely and adequately identify those methods and opinions as required by the Federal Rules and this Court's Scheduling Orders.

A. The Critical Issues Concerning Timely and Adequate Disclosure Are Not Disputed.

Plaintiffs' opposition does not dispute the facts that are determinative of the issue of

¹ Although Plaintiffs' response tries to phrase this premise more delicately, this is clearly the gist of Plaintiffs' position. (See Dkt. No. 1987 at 2-3: "It is immaterial to the validity of the results whether the mechanism generating the outcome is fictitious as long as it is accepted by respondents." (quoting Ex. B, Hanemann Decl. ¶ 11).)

timely and complete disclosure. Specifically:

1. Plaintiffs do not deny that the Stratus CV report is based on a survey concerning a purported remediation program that would “treat land and waters in the Illinois River watershed with alum.” (Dkt. No. 1853-4 at Page 1-7.)
2. Plaintiffs do not deny that conclusions concerning the use of alum as a treatment for excess phosphorus present an issue requiring expert testimony.
3. Plaintiffs do not deny that any opinions concerning the viability and effectiveness of the use of alum as a treatment for excess phosphorus on any portion of the IRW constitute remediation opinions.
4. Plaintiffs do not deny that the Court’s Orders required them to serve complete expert disclosures for remediation opinions on May 15, 2008.
4. Plaintiffs do not deny that they did not serve the Stratus CV report that contained the purported alum treatment program until January of 2009.
5. Plaintiffs do not deny that the Stratus report provides no scientific basis for using alum as a treatment for excess phosphorus in the IRW.

Plaintiffs argue that they were under no obligation to provide timely disclosure of the alum treatment program described in the Stratus CV report because the Stratus report merely “used alum treatment as a mechanism within the valuation framework to create a tradeoff for survey respondents in order to elicit their valuation of a scenario outcome.” (Dkt. No. 1987 at 7-8.) Based on this jargon-laden assertion, Plaintiffs claim that the effectiveness and viability of the alum treatment program they proposed is irrelevant to the CV study, and that Plaintiffs were not required to provide expert disclosures for the treatment program. (*Id.* at 8-12.)

As noted above, Defendants believe that the premise of Plaintiffs’ position here is flawed,

and expect to challenge it on Daubert grounds as necessary. Even accepting Plaintiffs' premise, however, Plaintiffs' own submissions make clear that the Stratus authors wanted at least some threshold level of credibility for the story they would tell their survey respondents. As Plaintiffs' quote their expert Dr. Tourangeau: "[w]hat was critical to us was to present a solution to people that was plausible." (See Dkt. No. 1987 at 11 (quoting Tourangeau rough Tr. at 53).)

"Plausible" means "seemingly or apparently valid, likely, or acceptable; credible." American Heritage Dictionary of the English Language at 1346 (4th ed. 2000). Materials Stratus produced its report demonstrate that the Stratus authors understood "plausible" to mean "reasonable." (See Ex. 1: 3/21/08 Memo from Stratus authors to Plaintiffs' attorneys at 4, 6 (noting need for "reasonable estimates" of "expected recovery with moratorium and cleanup"; "we need advice from the injury team about how to make this scenario as plausible as possible").)

Despite acknowledging this standard, however, the Stratus report cites no evidence supporting its assertion that the alum treatment proposal its authors presented to survey respondents was "plausible" or "reasonable." The report gives no indication of where its scientifically based proposal comes from or what data or expertise validates the proposal under the Stratus experts' own "plausible/reasonable" standard. In a nutshell, the Stratus report rests on the premise that its alum treatment proposal is "plausible" and "reasonable" (Dkt. No. 1987 at 11-12) but offers no scientific basis to support the conclusion that the proposal is in fact "plausible" or "reasonable." The Stratus authors acknowledge that they cannot simply make up an alum treatment scenario out of whole cloth, but include nothing in their report that suggests they did anything else. Plaintiffs and their experts did not provide adequate or timely disclosures concerning the Stratus report's alum treatment proposal, and the Court should therefore strike from the report both the proposal and all opinions that rely on it.

B. Plaintiffs Cannot Use Todd King’s Report as a Substitute for Timely Disclosure of the Stratus Report’s Proposals of Alum Treatment as a Remedy.

Instead of addressing the issues of timely disclosure, Plaintiffs’ response spends much of its time discussing the report of Todd King, which mentions the possibility of alum treatment.

Plaintiffs argue that the fact that King has not outright rejected alum treatment as a means of remediating excess phosphorus in the IRW is sufficient to support the Stratus CV report’s assertion that alum treatment is a “plausible” remedy. This argument fails for two reasons. First, King’s report talks about alum only in general terms, provides no discussion or support for the detailed assertions in the Stratus report, and in fact rejects a portion of the Stratus proposal. Second, the Stratus authors did not rely on or even see the King report, and thus could not have based their “plausibility” conclusions on that report.

1. King’s report does not support alum treatment as a “plausible” remedy.

Contrary to Plaintiffs’ assertions, Todd King’s report does not demonstrate that alum treatment was a “plausible” remedy for claimed excess phosphorus. The CV Report interviewers presented alum treatment as the cure for excess phosphorus in the entire IRW, land, river, and lake. The King report not only fails to support but actually contradicts such a conclusion.

As Plaintiffs’ response admits, King expressly rejected the use of alum as a remedy for excess phosphorus for the rivers and streams in the IRW. (See Dkt. No. 1987 at 4 (“alum treatment was not retained as a potential technology for the riverine areas”).) The IRW rivers and streams are, of course, one of the main focuses of Plaintiffs’ case, and the Stratus CV report relies on the specific assertion that alum treatment will return “the Illinois River” to its 1960 condition in 10 years. (Dkt. No. 1853-4 at Page 1-7.) Thus, even without looking any further, King’s rejection of alum treatment as a means of riverine remediation fatally undercuts the

plausibility and reasonableness of the Stratus CV survey's proposal of alum treatment to cure the entire IRW.

The King report's comments about alum treatment for the IRW land and Lake Tenkiller likewise provide no support for the plausibility of the Stratus CV survey's conclusions. As demonstrated by the passages that Plaintiffs quote in their response, King's general notation that alum treatment for these areas "REQUIRES ADDITIONAL INVESTIGATION AND ASSESSMENT" indicates only that the method is "potentially effective and implementable" and that "additional investigation or assessment is required." (Dkt. No. 1987 at 4 (quoting King report at 10 (Dkt. No. 1987-2) (emphasis added).) In his specific discussion of alum treatment, King notes that "aluminum can potentially damage aquatic ecosystems and is potentially phytotoxic to plants at low pH" (Dkt. No. 1987-2 at 12), and "may cause siltation of aquatic habitats and fish gills and potential aquatic toxicity." (*id.* at 16, 19). Mr. King also testified that he did not investigate the costs of alum treatment here because its usefulness "was to create habitat as opposed to remediate the phosphorus so it kind of fell outside of the scope on that basis." (Ex. 2: King Dep. at 94:14-16.) Thus, the passages Plaintiffs quote from King's report do not suggest that alum treatment of the land and lake is actually a "plausible" remediation approach, only that it might possibly be a "plausible" approach if further investigation and assessment provide support that is now missing.

In sharp contrast to King's noncommittal and general comments, the alum treatment proposal on which the Stratus CV survey report relies is both definite and specific. The survey report unequivocally refers to alum treatment as "The Solution." (Dkt. No. 1853-4 at Page 1-7.) It identifies specific agencies that will conduct the alum treatment and describes the different methods that will be used to apply alum to land and water. It asserts that the alum treatment will

work only if the Court bans further application of poultry litter. It asserts that the treatment will return the Illinois River to its 1960 condition in 10 years and Lake Tenkiller in 20 years. It concludes that alum will not harm human beings, and predicts a number of specific short-term negative effects. (Dkt. No. 1853-4 at Pages 1-7, 4-14 through 4-27.) Nothing in the King report supports or even discusses any of these specific claims in the Stratus CV report, and King's report certainly does not demonstrate that the Stratus conclusions are "plausible."

In sum, read most generously, King's report (1) flatly rejects alum treatment as a remedy for the rivers and streams of the IRW and (2) defers any decision to conclusively eliminate the general concept of alum treatment as a possible remedy for the IRW land or for Lake Tenkiller. These conclusions are a far cry from, and in part flatly conflict with, the Stratus CV survey's detailed description of a specific alum treatment applied by specific agencies using specific methods will return all phosphorus levels in the IRW—land, lake, and rivers—to their 1960 levels. King's report does render the Stratus CV survey's conclusions "plausible," and in fact contradicts those conclusions with respect to the treatment of the IRW's rivers and streams. King's report does not constitute an expert "disclosure" of the alum treatment program proposed by the Stratus report, and Plaintiffs cannot use King as a substitute to disguise their late and incomplete disclosure of this remediation option.

2. The Stratus CV report did not base any determination of the "plausibility" of the alum treatment scenario on the King report.

Moreover, even assuming for the sake of argument that King's report actually supported the use of alum treatment in some portion of the IRW, Plaintiffs could not use that report to justify or excuse their late disclosure of the Stratus CV survey report because the Stratus report did not rely in any way on King's opinions. There is no question that in forming an opinion, one expert may rely on the opinions and conclusions of another expert, assuming they are of "a type

reasonably relied on in a particular field.” Fed. R. Evid. 703; see Dura Auto. Sys. v. CTS Corp., 285 F.3d 609, 613 (7th Cir. 2002). But key to this rule is the requirement that the expert actually rely on the other expert’s opinion. After all, one expert cannot possibly evaluate whether a scenario in another expert’s report is “plausible” if the first expert has never seen the second expert’s report.

Here, Plaintiffs offer no indication that any of the Stratus authors relied in any way on the King report in preparing their own opinions, or indeed even read the King report. The King report is not cited in the Stratus report (see Dkt. No. 1853-4 at Page ES-1 – 7-9); it is not listed in the Stratus report’s references (id. at Pages 1-10 – 1-14, 2-8, 3-21 – 3-23, 4-40 – 4-41, 5-18, 7-8 – 7-9); and it was not included in the Stratus authors’ “considered materials” provided by Plaintiffs. At the deposition of Stratus report author David Chapman, the only mention of King’s report came when Chapman denied any knowledge of the report’s reservations about alum treatment. (See Ex. 3: Morey Dep. at 109:1-11.) This was not for want of trying; internal memos from the Stratus authors to the Plaintiffs’ attorneys show that the Stratus team tried to obtain actual, real-world data concerning remediation methods and even proposed a meeting between the “economic team” and the “injury team.” (Ex. 1: 3/21/08 Memo from Stratus authors to Plaintiffs’ attorneys at 5-7 (urging attorneys to share memo with injury team “to help them understand the information required for the survey instrument”).)

As far as the Stratus report and its supporting materials show, however, the Stratus authors never received this “required” information. Instead, as Plaintiffs’ own response repeatedly shows, Plaintiffs’ damages experts could only try to make up an alum treatment story good enough that the interviewees would believe it. (See Dkt. No. 1987 at 9-12.) Thus, even assuming that King’s report supported the plausibility of Stratus’s specific IRW alum treatment

proposal, the report does not provide the required expert disclosure for the Stratus CV report's proposal because the Stratus authors neither read nor relied on King's report.

C. Even Plaintiffs' Fictitious Alum Opinion Should Have Been Timely Disclosed.

Even accepting for the sake of argument Plaintiffs' premise that a valid scientific conclusion may be based on a fabricated scientific premise, Plaintiffs still have no excuse for failing to provide their fictitious alum treatment opinion by the May 15, 2008 deadline for all Plaintiffs' expert remediation opinions.

The whole purpose of the expert disclosure deadlines is to prevent surprise, to permit parties to conduct discovery into the substance and bases of opposing experts' opinions well in advance of trial, and allow parties to retain their own experts to evaluate, test, and refute those opinions. In the present case, if Plaintiffs intended any of their experts to offer or rely on an opinion based on alum treatment of the IRW (hypothetical or otherwise), Plaintiffs must have known that Defendants would dispute any such opinion and would retain their own experts to counter the argument. That is of course exactly what Defendants did when they received the belated Stratus disclosure of the alum treatment proposal: they asked their existing experts to do what they could to evaluate and refute Plaintiffs' new remediation proposal by the March 31, 2009 final deadline for Defendants' responsive expert reports.

Unfortunately, Plaintiffs' months-late disclosure prevented Defendants from fully preparing to meet the new alum treatment remediation proposal, regardless of whether the proposal was fictional or not. For example, had Defendants known that the "plausibility" of such a treatment proposal would be an issue, Defendants would have carefully examined Plaintiffs' witnesses and experts, and in particular Plaintiffs' (nonfictional) remediation expert Todd King, about the viability, effectiveness, and plausibility of such a treatment method and of the

assumptions that underlie it (e.g., the supposed 1960 baseline, the lack of human health risks, the short-term character of environmental effects). In addition, Defendants likely would have retained an additional expert with actual experience in the performance of alum treatment to specifically address the Stratus alum remediation proposal and to demonstrate its lack of plausibility.

This additional discovery and expert work would have permitted Defendants to challenge the reasonableness and plausibility of the Stratus report's alum treatment scenario, and through it the validity of the CV survey results themselves. Indeed, the Stratus authors admit that the results of the CV study could have been different if the alum remediation scenario had been different. (See Ex. 4: Krosnick Dep. at 116:24 – 117:2: “Q. Is it possible that the results of the CV survey could have been different if the recovery times had been different in the proposed solution? A. Yes.”); see also Ex. 5: Bishop Dep. at 61:17 – 63:14.) Plaintiffs' failure to timely disclose their hypothetical “solution” prevented Defendants from pursuing such discovery and from preparing such an expert defense.

Plaintiffs' failure to timely disclose the alum-treatment opinion on which they now rely is even more egregious given the apparently fabricated character of that opinion. With an actual, real-world expert opinion, a proper expert disclosure involves considerable effort: not only must the report set forth the opinion itself, it must also explain the factual basis for the opinion, analyze how the expert arrived at the opinion, and assemble and produce all the materials that the expert considered in reaching the opinion. See Fed. R. Civ. P. 26(a)(2)(B). In contrast here, a timely disclosure the CV survey's opinion about alum treatment would have been simple; being fictional, the opinion has no factual basis, no analysis, and no supporting materials, and all Plaintiffs would have needed to do was articulate the opinion itself. (For example: “By the way,

we also intend to have experts rely on the conclusion that treating the IRW with alum would return it to its 1960 state within 10 years.”)

Plaintiffs were clearly in a position to do this; their own experts’ interviewers had already prepared just such statements about alum treatment for interviewees and were pretesting and pilot testing those statements in the Spring of 2008. (See Dkt. No. 1853-4 at Page 3-6 (pretesting of the questionnaires occurred from Jan. 14 – July 31, 2008); id. at Page 3-7 (pilot tests of the questionnaires occurred from April 7–23, 2008 (Pilot I) and July 12–30, 2008 (Pilot II)); see also id. at Page H-29.) Nevertheless, Plaintiffs failed to disclose to Defendants either the fictional alum-treatment conclusions or Plaintiffs’ intent to rely on such conclusions until January 2009, nearly eight months after the Court’s deadline.

In sum, even accepting for the sake of argument Plaintiffs’ assertion that their damages experts may rely on a fictitious expert opinion about a remediation method that lacks any foundation either in fact or in the record, Plaintiffs could have and should have disclosed this hypothetical remediation proposal with its other expert remediation disclosures by the Court’s May 15, 2008 deadline for such disclosures. Plaintiffs offer no excuse for their failure to do so, and the unauthorized eight-month delay has unfairly prejudiced Defendants and denied them the opportunity to take needed discovery. Regardless of whether it is real or imaginary, the Court should strike Plaintiffs’ late disclosure of the alum treatment proposal.

CONCLUSION

For the reasons set forth above, Defendants urge the Court to strike from Plaintiffs’ damages experts’ disclosures any and all results, opinions, and conclusions based on representations or assumptions about alum treatments of Lake Tenkiller or any portion of the IRW, including but not limited to the CV survey portion of the Stratus report.

Dated: May 4, 2009

Respectfully submitted,

RHODES, HIERONYMUS, JONES,
TUCKER & GABLE, PLLC

BY: s/ John H. Tucker
JOHN H. TUCKER, OBA #9110
COLIN H. TUCKER, OBA #16325
THERESA NOBLE HILL, OBA #19119
100 W. Fifth Street, Suite 400 (74103-4287)
P.O. Box 21100
Tulsa, Oklahoma 74121-1100
(918) 582-1173
(918) 592-3390 Facsimile
And
DELMAR R. EHRICH
BRUCE JONES
KRISANN KLEIBACKER LEE
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
(612) 766-7000
(612) 766-1600 Facsimile
**ATTORNEYS FOR CARGILL, INC. AND CARGILL
TURKEY PRODUCTION LLC**

BY: /s/ Michael Bond
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
MICHAEL BOND, AR Bar No. 2003114
ERIN WALKER THOMPSON, AR Bar No.
2005250

DUSTIN DARST, AR Bar No. 2008141
KUTAK ROCK LLP
234 East Millsap Road Suite 400
Fayetteville, AR 72703-4099
Telephone: (479) 973-4200
Facsimile: (479) 973-0007

-AND-

STEPHEN L. JANTZEN, OBA No. 16247
PATRICK M. RYAN, OBA No. 7864
PAULA M. BUCHWALD, OBA No. 20464
RYAN, WIALEY & COLDIRON, P.C.
119 N. Robinson

900 Robinson Renaissance
Oklahoma City, OK 73102
Telephone: (405) 239-6040
Facsimile: (405) 239-6766
E-Mail: sjantzen@ryanwhaley.com

-AND

THOMAS C. GREEN
MARK D. HOPSON
TIMOTHY K. WEBSTER
JAY T. JORGENSEN
GORDON D. TODD

SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005-1401
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

**ATTORNEYS FOR TYSON FOODS, INC.;
TYSON POULTRY, INC.; TYSON
CHICKEN, INC; AND COBB-VANTRESS,
INC.**

BY: /s/ A. Scott McDaniel
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
A. SCOTT MCDANIEL, OBA 16460
NICOLE LONGWELL, OBA 18771
PHILIP D. HIXON, OBA 19121
McDaniel, Hixon, Longwell & Acord, PLLC
320 S. Boston Avenue, Suite 700
Tulsa, OK 74103
-AND-
SHERRY P. BARTLEY, AR BAR #79009
MITCHELL WILLIAMS, SELIG,
GATES & WOODYARD, PLLC
425 W. Capitol Avenue, Suite 1800
Little Rock, AR 72201
**ATTORNEYS FOR PETERSON FARMS,
INC.**

BY: /s/ R. Thomas Lay
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
R. THOMAS LAY, OBA #5297
KERR, IRVINE, RHODES & ABLES
201 Robert S. Kerr Ave., Suite 600
Oklahoma City, OK 73102
-AND-
JENNIFER S. GRIFFIN
LATHROP & GAGE, L.C.
314 East High Street
Jefferson City, MO 65101
**ATTORNEYS FOR WILLOW BROOK
FOODS, INC.**

BY: /s/ Randall E. Rose
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
RANDALL E. ROSE, OBA #7753
GEORGE W. OWENS, ESQ.
OWENS LAW F P.C.
234W. 13 Street
Tulsa, OK 74119
-AND-
JAMES MARTIN GRAVES, ESQ.
GARY V. WEEKS, ESQ.
BASSETT LAW FIRM
POB 3618
Fayetteville, AR 72702-3618
**ATTORNEYS FOR GEORGE'S, INC. AND
GEORGE'S FARMS, INC.**

BY: /s/John R. Elrod
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
JOHN R. ELROD
VICKI BRONSON, OBA #20574
BRUCE WAYNE FREEMAN
CONNER & WINTERS, L.L.P.
100 W. Central Street, Suite 200
Fayetteville, AR 72701
**ATTORNEYS FOR SIMMONS FOODS,
INC.**

BY: /s/ Robert P. Redemann

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

ROBERT P. REDEMANN, OBA #7454

LAWRENCE W. ZERINGUE, ESQ.

DAVID C. SENGER, OBA #18830

PERRINE, MCGIVERN, REDEMANN, REID,

BARRY & TAYLOR, P.L.L.C.

Post Office Box 1710

Tulsa, OK 74101-1710

-AND-

ROBERT E. SANDERS

STEPHEN WILLIAMS

YOUNG, WILLIAMS, HENDERSON &

FUSILIER

Post Office Box 23059

Jackson, MS 39225-3059

**ATTORNEYS FOR CAL-MAINE FARMS,
INC. AND CAL-MAINE**

CERTIFICATE OF SERVICE

I certify that on the 4th day of May, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General
Kelly Hunter Burch, Assistant Attorney General
J. Trevor Hammons, Assistant Attorney General
Daniel Lennington, Assistant Attorney General

drew_edmondson@oag.state.ok.us
kelly_burch@oag.state.ok.us
trevor_hammons@oag.state.ok.us
Daniel.lennington@oag.ok.gov

Melvin David Riggs
Joseph P. Lennart
Richard T. Garren
Sharon K. Weaver
Robert Allen Nance
Dorothy Sharon Gentry
David P. Page
Riggs Abney Neal Turpen Orbison & Lewis, P.C.

driggs@riggsabney.com
jlennart@riggsabney.com
rgarren@riggsabney.com
sweaver@riggsabney.com
rnance@riggsabney.com
sgentry@riggsabney.com
dpage@riggsabney.com

Louis W. Bullock
J. Randall Miller
Miller Keffer & Bullock Pedigo LLC

lbullock@mkblaw.net
rmiller@mkblaw.net

William H. Narwold
Elizabeth C. Ward
Frederick C. Baker
Lee M. Heath
Elizabeth Claire Xidis
Fidelma L Fitzpatrick
Motley Rice LLC

bnarwold@motleyrice.com
lward@motleyrice.com
fbaker@motleyrice.com
lheath@motleyrice.com
cxidis@motleyrice.com
ffitzpatrick@motleyrice.com

COUNSEL FOR PLAINTIFFS

Stephen L. Jantzen
Paula M. Buchwald
Patrick Michael Ryan
Ryan, Whaley & Coldiron, P.C.

sjantzen@ryanwhaley.com
pbuchwald@ryanwhaley.com
pryan@ryanwhaley.com

Mark D. Hopson
Jay Thomas Jorgensen
Timothy K. Webster
Gordon D. Todd
Sidley Austin LLP

mhopson@sidley.com
jjorgensen@sidley.com
twebster@sidley.com
gtodd@sidley.com

L Bryan Burns
Robert W. George

bryan.burs@tyson.com
robert.george@tyson.com

Michael R. Bond
Erin W. Thompson
Dustin R. Darst
Kutack Rock LLP

michael.bond@kutackrock.com
erin.thompson@kutackrock.com
dustin.dartst@kutackrock.com

**COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.;
AND COBB-VANTRESS, INC.**

R. Thomas Lay
Kerr, Irvine, Rhodes & Ables

rtl@kiralaw.com

Jennifer S. Griffin
Lathrop & Gage, L.C.

jgriffin@lathropgage.com

COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

rredemann@pmrlaw.net
lzingue@pmrlaw.net
dsenger@pmrlaw.net

Robert E. Sanders
E. Stephen Williams
Young Williams P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens
Randall E. Rose
The Owens Law Firm, P.C.

gwo@owenslawfirmmpc.com
rer@owenslawfirmmpc.com

James M. Graves
Gary V. Weeks
Woody Bassett
K.C. Dupps Tucker
Bassett Law Firm

jgraves@bassettlawfirm.com
gweeks@bassettlawfirm.com
wbassett@bassettlawfirm.com
kctucker@bassettlawfirm.com

COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod
Vicki Bronson
Bruce W. Freeman
P. Joshua Wisley
Conner & Winters, LLLP

jelrod@cwlaw.com
vbronson@cwlaw.com
bfreeman@cwlaw.com
jwisley@cwlaw.com

COUNSEL FOR SIMMONS FOODS, INC.

A. Scott McDaniel
Nicole M. Longwell
Philip D. Hixon
Craig Mirkes
McDaniel, Hixon, Longwell & Acord, PLLC

smcdaniel@mhla-law.com
nlongwell@mhla-law.com
phixon@mhla-law.com
cmirkes@mhla-law.com

Sherry P. Bartley
Mitchell Williams Selig Gates & Woodyard
COUNSEL FOR PETERSON FARMS, INC.

sbartley@mwsgw.com

Michael D. Graves

mgraves@hallestill.com

Dale Kenyon Williams, Jr.

kwilliams@hallestill.com

COUNSEL FOR CERTAIN POULTRY GROWERS

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

Thomas C. Green

Sidley Austin Brown & Wood LLP

1501 K Street NW

Washington, DC 20005

**COUNSEL FOR TYSON FOODS,
INC., TYSON POULTRY, INC.,
TYSON CHICKEN, INC.; AND
COBB-VANTRESS, INC.**

s/ John H. Tucker